

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRYANE SANDOVAL,

Applicant,

v.

No. CV 14-191 KG/CG

JAMES JANECKA, et al.,

Respondents.

**ORDER DENYING CERTIFICATE OF APPEALABILITY AND REQUEST FOR
APPOINTMENT OF COUNSEL**

THIS MATTER comes before the Court on Petitioner Bryane Sandoval's letter to the Court filed March 2, 2015, (Doc. 30), and *Addendum to Document 30* filed April 9, 2015 (Doc. 35), (together the "Motion"). Petitioner requests the Court grant him a certificate of appealability as to one of the grounds asserted in his Petition for habeas relief pursuant to 28 U.S.C. § 2254, and also appoint him counsel.¹ (Doc. 30). Respondents did not file a response to the Motion and none is required.

The Court previously dismissed without prejudice Grounds One, Three, and Four of the Petition. (Doc. 28). As Ground One, Petitioner argued that his due process and equal protection rights were violated because of "disparate treatment." (Doc. 1 at 5; Doc. 15 at 5). The Court considered the United States Magistrate Judge's recommendation to deny the Petition in its entirety, as well as all of Petitioner's objections to the recommendation filed October 23 and 30, November 19, December 3 and 9 of 2014. (Docs. 19, 20, 23, 25, 26). The Court adopted the Magistrate Judge's findings and

¹ Petitioner further requests the Court to liberally construe his pleadings, and argues for the first time that he is Native American and that "other Native Americans have been subject to mistreatment from the Four Winds Recovery Center." (Doc. 35 at 1). The Court will not consider the argument because it is not pled as a proper ground for habeas corpus relief.

conclusions of law as to Grounds One, and considered and overruled all of Petitioner's objections. The Court specifically found that none of Petitioner's allegations provide the necessary factual support for his claim that his constitutional rights were violated as a result of "disparate treatment." The Court concluded that Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts required dismissal of Ground One because Petitioner had "fail[ed] to allege facts that state a constitutional violation." See *Boutwell v. Keating*, 399 F.3d 1203, 1211 (10th Cir. 2005).

Petitioner now moves the Court to grant him a certificate of appealability as to Ground One. In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the habeas corpus applicant. In support of the Motion, Petitioner merely urges the Court to re-consider his objections again. (Doc. 35 at 1). For all of the reasons set forth in the Court's previous Order overruling those objections, (Doc. 28 at 7–10), the Court finds that Petitioner has failed to make a substantial showing that he has been denied a constitutional right, and will therefore deny a certificate of appealability as to Ground One.

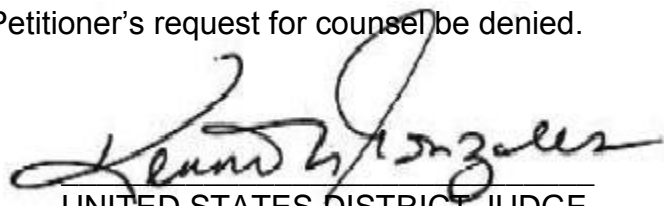
The Court also dismissed without prejudice Grounds Three and Four of the Petition following Petitioner's request to voluntarily dismiss those grounds. (Doc. 28 at 10). Accordingly, the Court will also deny a certificate of appealability as to Grounds Three and Four.

Petitioner again requests that he be appointed counsel. (Doc. 30 at 1). This Court previously considered Petitioner's request for counsel, and weighed several factors, including "the merits of the litigant's claims, the nature of the factual issues raised in the

claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.” *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quotations omitted). The Court found that Petitioner appeared able to understand the issues in his case and was representing himself in an intelligent and capable manner, and denied his motion for appointment of counsel. Petitioner does not provide any reasons for his renewed request, and therefore Petitioner's request for counsel shall be denied again.

IT IS THEREFORE ORDERED that a certificate of appealability be denied for Grounds One, Three, and Four of the Petition.

IT IS ALSO ORDERED that Petitioner's request for counsel be denied.



UNITED STATES DISTRICT JUDGE